IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4188 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SHILPABEN GORDHANBHAI - Petitioner(s)

Versus

STATE OF GUAJRAT & 1 - Respondent(s)

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Appearance :

MR KB PUJARA for Petitioner(s) : 1,
MR DIPAN DESAI AGP for Respondent(s) : 1,
MS NAYNABEN K GADHVI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/02/2006

ORAL JUDGMENT

1.Rule. Mr.Desai, learned AGP waives service of notice of Rule for Respondent No.1, Ms.Gadhvi, learned Counsel for Respondent No.2. With the consent of the parties,

the matter is finally heard today.

2. Upon hearing the learned Counsel appearing for the parties, it appears that the only issue which deserves to be considered in the present petition petition is that whether the petitioner is entitled for the addition of five marks on account of her participation in the State-level or National-level tournament by the Institution which is recognized by the State Government.

3. This Court had occasion to consider the similar issue in Special Civil Application No.5248 of 2005 in its decision dated 30.1.2006 and it was observed by this Court as under:

> *"4. Upon hearing, learned counsel appearing for both the sides, it appears that on factual aspects, there is no dispute on the following points:*
>
> *1. The petitioner has applied for the post of Vidhya Sahayak.*
>
> *2. As per the advertisement, for participation at the State Level tournament in notified or prescribed game, candidate is entitled for additional 5 marks.*
>
> *3. Participation by the petitioner at Womens Football National Championship and Gujarat State Football Tournament, which is at the State Level.*
>
> *5. The stand of the respondent authority as it*

appears from the affidavit-in-reply is that the institute, which has organised the tournament is not approved by the State Government viz. Secretary, Sport Academy and Youth Cultural Academy, Gandhinagar. In the affidavit-in-rejoinder, it has been stated by the petitioner that the application for renewal was made by the said Association and the said application was pending and the communication for the same was intimated by the State Government to the District Primary Education Officer dated 02.11.2004, which is produced on record at page 42 of the petition.

5. The learned counsel appearing for the petitioner has produced during the course of hearing, the order dated 20.04.2005 passed by the State Government, whereby the renewal application of Gujarat State Womens Football Association is granted and the said Association is included in the 'A' Group.

6. Mr. Barot, learned counsel appearing for the respondent No. 2 also confirms the said position and therefore, now there is no dispute on the point that Gujarat State Womens Football Association is an approved Institution for the purpose of awarding additional 5 marks to the concerned candidate as was sought to be canvassed in the affidavit in reply.

7. In view of the aforesaid factual aspects, the petitioner would be legitimately entitled to get the benefit of the conditions of the advertisement of getting additional 5 marks while consideration of her candidature for the post of Vidhya Sahayak.

However, as the direction is being given today, the same may not result into upsetting or altering the rights of any candidates who have already been given appointment for the post.

1. *Therefore, it is hereby directed that without disturbing the appointment of the Vidhya Sahayaks already made, the respondent No.2 shall consider the matter for awarding additional 5 marks to the petitioner in view of the decision of the State Government dated 20.04.2005 for granting approval to the Gujarat State Womens Football Association and participation by the petitioner for the tournament as per the Certificate annexed as Annexure-C, copy whereof is produced at page 19, and it shall finalise the matter of preparation of the select list in accordance with law, preferably within a period of one month from the receipt of the order of this Court."*

4. In view of the same reasoning the matter deserves to be considered accordingly. Even in the present case it does appear that at the time when the advertisement was given renewal application was pending. Today during the course of the hearing, Mr.Pujara, learned Counsel for the petitioner has placed on record the order dated 14.6.2005 passed by the State Government, whereby the Wrestling Association of Gujarat is approved by the State Government and the renewal application is

granted. Therefore, the petitioner would be entitled to the benefits of marking as per the policy for recruitment for Vidhya Sahayak. Hence, the following orders:

> *(a) In view of the aforesaid factual aspects, the petitioner would be legitimately entitled to get the benefit of the conditions of the advertisement of getting additional 5 marks while consideration of her candidature for the post of Vidhya Sahayak. However, as the direction is being given today, the same may not result into upsetting or altering the rights of any candidates who have already been given appointment for the post.*
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> *(b) Therefore, it is hereby directed that without disturbing the appointment of the Vidhya Sahayaks already made, the respondent No.2 shall consider the matter for awarding additional 5 marks to the petitioner in view of the decision of the State Government dated 14.6.2005 for granting approval to the Gujarat State Rustling Association and participation by the petitioner for the tournament as per the Certificate annexed, and it shall finalise the matter of preparation of the select list in accordance with law, preferably within a period of one month from the receipt of the order of this Court.*

5. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, no order as to costs. Direct service is

permitted.

8.2.2006 **(Jayant Patel, J.)**

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